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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,294	11/13/2003	Dimitri T. Azar	00633-041001	8876
26161	7590	06/19/2007		
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER MATTHEWS, WILLIAM H	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 06/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,294

Applicant(s)

AZAR, DIMITRI T.

Examiner

William H. Matthews (Howie)

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5-15-07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8-11,13-18 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8-11,13-17,20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 5-15-07 have been fully considered but they are not persuasive.
2. Regarding claim 1, Applicant contends Kern lack "the wavefront data is configured according to a selected high-order aberration correction". Examiner disagree because the electrode modification accord to correct a selected high order aberration.
3. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,9-11,15-17,21,22,24,25 are rejected under 35 U.S.C. 102(b) as being anticipated by Kern USPN 4601545.
3. Kern disclose in c3:9-49, c4:10-24, c5:14-25, c5:37-65, c6:12-51 an intraocular lens comprising variable refraction optical element 52, memory element (RAM or ROM included in CPU), actuators 71/62/64/73/75 (electrode matrix), controller 54/58 (CPU or gate). The memory element stores instructions for controlling the lens (c3:20-23), and

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Kern disclose controlling index of refraction at discrete points (c4:10-24) and creating an aspheric lens effect (c5:45-47) which reduce high-order, or spherical, aberration.

Regarding claim 10, Figure 1 and 5D show a plurality of individually addressable electrodes controlled by parallel signals.

Regarding claims 15-17, the limitations recited are of intended use (see MPEP 2114) and do not add structural limitations to the optical element. The Kern prosthesis is capable of use in any chamber or lens bag of any patient.

Regarding claim 22, 24, and 25 the memory element may be rewritable RAM such that the optical element is modifiable by wireless transmission.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8,13,14,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kern USPN 4601545 as applied to claims 1,9-11,15-17,21-22,24-25 above, and further in view of Rizzo, III USPN 5800530.

Kern meet the structural limitations of claims 8,13, 13 and 23 as described above but lack the express written disclosure of including a rangefinder. Rizzo, III teach in figure 1, c2:15-56, and c3:40-49 an intraocular lens comprising variable focus lens

controlled by an actuator and CPU which receive signals from a rangefinder 24 in order to provide accurate distance estimates to determine proper accommodation levels.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the intraocular lens system disclosed by Kern '545 to include a rangefinder in communication with a CPU, as taught by Rizzo, III '530, in order provide accurate distance estimates to determine proper accommodation levels.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kern USPN 4601545 as applied to claims 1,9-11,15-17,21-22,24-25 above, and further in view of Sandsted et al. USPN 6749632.

It is noted that claim 20 recites a product by process limitation (see MPEP 2113). However, in view of the structure implied by a unique measurement, Kern lack the express written disclosure of the instructions stored in the memory device being based on wavefront measurement performed on a patient. Sandsted et al. teach, in c4:23-67, adjusting an intraocular lens profile in accordance with wavefront data measured on a patient in order to accurately correct for high-order aberrations specific to said patient.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the intraocular lens system disclosed by Kern '545 to include data based on a measurement performed on a patient, as taught by Sandsted et al. '632, in order to accurately correct for high-order aberrations specific to said patient.

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kern USPN 4601545 as applied to claims 1,9-11,15-17,21-22,24-25 above, and further in view of Nelson et al. US PN 7127299.

Kern meet the structural limitations of claim 26 as described above but lack the express written disclosure of the wireless transmission being encrypted. Nelson et al. teach in lines 33-42 of column 4 providing encryption to wireless control signals for implanted medical devices in order to provide security and safety.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the intraocular lens system disclosed by Kern '545 to include encrypted wireless control signals, as taught by Nelson et al., in order provide security and safety.

Conclusion

8. This application contains claim 18 drawn to an invention nonelected with traverse in the response filed 5-22-06. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 571-272-4753. The examiner can normally be reached on Monday-Friday 10-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

William H. Matthews (Howie)
Examiner
Art Unit 3738



WILLIAM H. MATTHEWS
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